

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other)	DOCKET FILE COPY ORIGINAL
Customer Information)	

COMMENTS OF CABLE & WIRELESS, INC.

Ann P. Morton, Esq.
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, Virginia 22182
(703) 734-4440

June 11, 1996

Call

SUMMARY

Cable & Wireless, Inc. ("CWI") fully agrees with the Commission's tentative conclusion in this proceeding that Congress intended Section 222 of the Telecommunications Act of 1996 ('96 Act") to balance privacy and competitive considerations regarding the use of customer proprietary network information ("CPNI") and other customer information addressed in Section 222. CWI believes that Commission rules clarifying and specifying the obligations of carriers under Section 222 would effectively promote the achievement of that Congressional intent.

Adoption and implementation of such rules would serve the public interest by promoting a clear understanding by customers of both the privacy rights protected by the '96 Act, as well as the increased competitive service choices that effective implementation of the Act should create for customers. To fully achieve this goal, however, CWI believes that the CPNI rules must also consider competitive issues Section 222 raises for carriers, by ensuring that incumbent local exchange carriers ("ILECs") do not leverage their market power and abuse the rules in order to gain unfair, anticompetitive advantages.

CWI urges the Commission to craft the CPNI rules according to the following principles:

- Existing customers and new customers should have adequate notification in writing of their CPNI rights where carriers seek to use CPNI for purposes unrelated to the service from which it is obtained. Customer approval should generally be obtained in writing, unless oral approval procedures can be adequately administered and verified to ensure validity. Because of the ILECs' market power and historical access to vast quantities of CPNI, the

Commission should specifically protect against abuses by mandating stringent, explicit written notification and written approval requirements for ILECs, and not allow ILECs to use any form of oral approval.

- The Commission should prescribe standards for preventing ILEC personnel from obtaining unauthorized access to proprietary information of other carriers and the CPNI of their customers. This principle is particularly key in the local resale context, in which both the resale carrier and the resale customer need added assurance against such abuse since underlying ILEC networks and facilities are providing transmission service and storing proprietary data.
- The Commission should specify standards for prompt and nondiscriminatory provision of CPNI data of ILEC customers when the ILEC customer has affirmatively authorized its release in writing to a designated third party, including a competitor to the ILEC. The rules must address this issue in order to prohibit ILECs from raising unilateral, delaying barriers to the release of such information. A Commission standard on this issue will particularly help the development and initiation of local competition opportunities.

As described further herein, CWI believes that the incorporation of these principles in the rules will support the dual privacy and competitive interests Congress envisioned in Section 222, and enable the CPNI rules to play a vital role in promoting the broader competitive goals of the '96 Act.

TABLE OF CONTENTS

SUMMARY.	i
I. INTRODUCTION AND STATEMENT OF INTEREST	3
II. CARRIERS SEEKING APPROVAL TO USE EXISTING CUSTOMERS' CPNI SHOULD PROVIDE ADVANCED WRITTEN NOTIFICATION TO CUSTOMERS OF THEIR CPNI RIGHTS. . . .	5
III. THE CPNI RULES SHOULD PRESCRIBE GENERIC CUSTOMER APPROVAL STANDARDS	8
IV. THE COMMISSION SHOULD ALSO CLARIFY COMPETITIVE ISSUES WHICH SECTION 222 RAISES FOR CARRIERS	10
V. CONCLUSION.	13

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other)	
Customer Information)	

COMMENTS OF CABLE & WIRELESS, INC.

Cable & Wireless, Inc., by its attorney, respectfully submits these comments regarding the Federal Communications Commission's ("Commission's") Notice of Proposed Rulemaking in the above-captioned matter.¹

As detailed below, CWI generally supports the Commission's proposal to adopt rules specifying in more detail and clarifying the obligations of telecommunications carriers regarding the use of Customer Proprietary Network Information ("CPNI") and other customer information, as outlined in Section 222 of the Telecommunications Act of 1996.² Absent such rules, the implementation of Section 222 could be uneven and

¹ See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, FCC 96-221 (released May 17, 1996) [hereinafter "*Notice*"].

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (*to be codified as* 47 U.S.C. § 151 *et seq.*) [hereinafter "'96 Act" or "Act"].

inconsistent, to the detriment of both customer privacy and competitive interests.

Accordingly, adopted CPNI rules should help to ensure that Section 222 requirements are carried out properly, thereby promoting a clear understanding by customers of both the privacy rights protected by the '96 Act, as well as the increased competitive choices that effective implementation of the law should create for them. The Commission's rules should also address competitive issues raised by Section 222 to support a level playing field, so that incumbent local exchange carriers ("ILECs") -- combining market power and access to an expansive historical base of CPNI -- do not gain unfair advantages over their competitors through anticompetitive uses of CPNI.

I. INTRODUCTION AND STATEMENT OF INTEREST

CWI provides competitive switched and private line data and voice interexchange services, local exchange services, and Internet access services, primarily to business customers in the United States. Consequently, CWI has a vital interest in the Commission's proposal to establish rules to clarify and specify in more detail the CPNI requirements of the '96 Act.

CWI fully agrees with the Commission's view that Congress intended Section 222 to balance customer privacy and competitive interests.³ To achieve the privacy protection goals underlying Section 222, CWI believes that the Commission's CPNI rules should ensure that customers have adequate notification of their CPNI rights where carriers seek their approval to use the information for purposes unrelated to

³ Notice at ¶ 15.

customers' existing services and which are not otherwise authorized under the Section 222(d) exceptions.

To promote Section 222's competitive objectives, CWI urges the Commission to ensure in particular that the adopted CPNI rules do not enable ILECs to act anticompetitively through improper use of customer CPNI. The Commission should prescribe more stringent customer notification and approval requirements regarding CPNI obtained by ILECs. This will curb the ILECs' ability to use their dominance in the local market (which will continue for the foreseeable future) to gain unfair advantages over their competitors.

CWI believes that such rules will play an important role in fostering the development of local competition as envisioned by the '96 Act. In this regard, the Commission should prescribe specific standards requiring ILECs to provide prompt and nondiscriminatory CPNI access by unaffiliated third party competitors when the ILEC's customer has provided affirmative written authorization for such CPNI disclosure. The Commission should require symmetry of access in such cases, and ILECs should be prevented from raising unilateral, delaying barriers to release of the CPNI for such authorized use.

Finally, regarding Section 222(b), the Commission should provide clear guidance to protect against unauthorized access by ILEC personnel to proprietary information of other carriers so that the data is not used for unauthorized purposes such as the ILEC's own marketing efforts. These protections will be especially important to carriers reselling local services of the ILEC, since many critical aspects of the resale

customer's CPNI and propriety information of the resale carrier will reside within the ILEC's network.

II. CARRIERS SEEKING APPROVAL TO USE EXISTING CUSTOMERS' CPNI SHOULD PROVIDE ADVANCED WRITTEN NOTIFICATION TO CUSTOMERS OF THEIR CPNI RIGHTS

CWI agrees with the Commission's tentative conclusion that carriers seeking approval to use existing customers' CPNI for purposes unrelated to the service from which it is derived should notify customers of their CPNI rights. Such advance notification is reasonable because, as the Commission indicates in the *Notice*, "customers must know that they can restrict access to the CPNI obtained from their use of a telecommunications service before they waive that right."⁴

The Commission seeks comment on whether such notification should be oral or written.⁵ CWI believes that, for non-ILEC carriers, a one-time advance written notification to existing customers would be an effective method for providing such notice, and would not unduly burden carriers. By contrast, oral notification, either in advance or simultaneous with the carrier's attempt to seek approval for CPNI, could invite abuse and subsequent disputes, or, at best, customer confusion. The effectiveness of oral notice would also depend upon the particular speakers addressing the customer base, which could create inconsistent results. Advance written notification would better ensure customer understanding and help to establish baseline

⁴ *Notice* at ¶ 28.

⁵ *Id.*

uniformity among carriers. For this reason, CWI urges the Commission to require advance written notification of CPNI rights for existing customers.

For advance written notification to be effective, the notice should be in a format familiar to existing customers. For example, at the carrier's option, such written notice could be provided in a billing insert, as a feature in a regular customer newsletter, or in another standard mailing format sent to existing customers. Carriers commonly use these written formats to notify customers about industry developments, new products, and changes in rules and regulations affecting their services. Carriers should be able to explain in these materials that customer approval of CPNI use for purposes unrelated to the existing services provided may enhance the carrier's ability to create and offer new services and products that may be useful to or better serve the customer's unique needs. The notice, however, must also clearly indicate that the customer may choose to restrict the use of the CPNI for such purposes. Whatever the precise form of the written notice, it should contain clear, unambiguous language regarding the customer's CPNI rights in a legible format with sufficient type size. It is critical that CPNI rules for ILECs be more stringent and be clear at the outset to prevent ILEC ability to use CPNI rules as a weapon against competition (e.g. to wage a "scare campaign" influencing customers to freeze their CPNI). The Commission should require clear instructions to ILEC customers regarding the purpose of the CPNI rules that do not include anticompetitive messages. Accordingly, similar to the Commission's approach

in adopting rules for primary interexchange carrier (“PIC”) changes, the CPNI rules should mandate these minimum requirements.⁶

CWI believes that such requirements for clear, unambiguous advance written notification to existing customers also should apply to ILECs. Rather than permitting a one-time notification, however, CWI urges the Commission to require the ILECs to provide this notice to customers at least annually. The fledgling state of local competition in the market and the substantial market power of ILECs compel this difference in treatment. For the foreseeable future, ILECs will have access to vast quantities of CPNI pertinent to the provision of local services and the usage of long distance and other competitive services. The Commission’s rules should not permit ILECs to leverage access to this information, gathered from the provision of monopoly services, in order to act anticompetitively in the marketplace. It is critical that CPNI rules for ILECs be more stringent and be clear at the outset to prevent ILEC ability to use CPNI rules as a weapon against competition (e.g. a “scare campaign” influencing customers to freeze their CPNI). Accordingly, while the ILECs retain such market dominance, the Commission for privacy and competitive reasons, should require ILECs to notify their customers of CPNI rights at set intervals (e.g., at least annually) to provide a greater level of protection against potential abuse. The Commission should also require clear instructions to ILEC customers regarding the purpose of the CPNI rules that do not include anticompetitive messages

⁶ See *Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd. 9560 (1995).

III. THE CPNI RULES SHOULD PRESCRIBE GENERIC CUSTOMER APPROVAL STANDARDS

CWI believes that the Commission should adopt generic requirements for obtaining customer approval for CPNI uses unrelated to the service from which it derives. The rules should address approvals by existing as well as new customers. The rules should also establish more stringent and detailed requirements if the carrier is an ILEC.

If a carrier seeks approval from an existing customer to use CPNI for purposes unrelated to the subscribed service, and the carrier has informed the customer of CPNI rights through advance written notification, the carrier should obtain the customer's written approval for such CPNI usage. The written signed approval could be obtained in a severable form provided to the customer as part of the advance written notification which the customer then returns to the carrier. In the alternative, written approval could be obtained from the customer through signature on a standardized form provided during a sales consultation by the carrier.

Written approval appears to be a preferable method because it may lend greater certainty and clarity to the approval process. If the Commission allows carriers to obtain approval orally from customers (e.g., through telemarketing), CWI believes that third party verification should be employed, and the burden should be placed on the carrier to demonstrate that approval was validly obtained in the event of a dispute. In any event, by virtue of their substantial local market power for the foreseeable future, oral approval should not be available to ILECs as a method for obtaining customer approval for the use of CPNI under Section 222. Oral procedures could be utilized

anticompetitively by ILECs to misinform a customer about the purposes of CPNI notification to dissuade the customer from releasing this data to a third party competitor.

With respect to new customers, carriers should be permitted to incorporate in one step a written notification and written approval process regarding CPNI in sales authorization forms or other standard contract forms. As in the case of notices for existing customers discussed above, to be deemed effective the written notification of CPNI rights for new customers should be explicit, unambiguous, and of sufficient type size.⁷ The notice should make clear to the customer at the outset that if CPNI access is authorized, the information may be used for, among other purposes, marketing, provision or development of services unrelated to the service from which the CPNI derives. This method would serve to inform new customers of their CPNI rights and enable them, at the time the account is activated, to exercise those rights regarding future uses of that information. The carrier, in turn, could initiate the new customer account with the appropriate processes in place based on the customer's determination. This approach to CPNI issues for new customers serves the privacy interests of the

⁷ To the extent that the Commission authorizes oral approval procedures regarding use of new customer CPNI, CWI believes that third party verification should be required and the burden placed on the carrier in the event of a dispute; however, for the same reasons as described above for existing customers, ILECs should not be permitted to use oral approval procedures for new customers because of the potential for anticompetitive abuses.

customer without unduly burdening carriers with major administrative costs and procedures.⁸

IV. THE COMMISSION SHOULD ALSO CLARIFY COMPETITIVE ISSUES WHICH SECTION 222 RAISES FOR CARRIERS

Section 222 also raises important competitive issues for carriers, particularly with respect to how the CPNI rules may affect the development of competition in the local market. In particular, the Commission seeks comment on how it should address Section 222(c)(2) which requires a carrier “upon affirmative written request by the customer” to disclose CPNI to “any person designated by the customer,”⁹ including unaffiliated third party competitors.

In addressing Section 222(c)(2), the Commission also asked for comment on ways that telecommunications carriers can guard against unauthorized access by third parties to CPNI.¹⁰ The Commission also broadly recognized that all carriers must establish effective safeguards to protect against such unauthorized access by employees, agents of the carrier, or unaffiliated third parties.¹¹ CWI agrees with the Commission’s tentative conclusion not to require specific mechanisms for all carriers,

⁸ With regard to both existing and new customers, CWI believes that written approval obtained by a non-ILEC carrier to utilize customer CPNI for other purposes should remain valid until customer informs the carrier of a change.

⁹ 47 U.S.C. § 222(c)(2).

¹⁰ Notice at ¶ 34.

¹¹ *Id.* at ¶ 35.

although previous requirements imposed on AT&T, the BOCs, and GTE may provide guidance in fulfilling this obligation.¹²

In addition to addressing safeguards against *unauthorized* access, CWI submits that the Commission should focus on the competitive implications of Section 222(c)(2) by establishing minimum standards for the provision of CPNI data by ILECs in cases of *authorized* access by an ILEC customer. Absent such Commission guidelines, CWI is concerned that even with valid written customer authorization, ILECs may unilaterally attempt to impose discriminatory administrative requirements upon their own customers and their competitors in order to delay or limit the disclosure of this data if it will serve the ILECs' own competitive interests. If the Commission does not prescribe standards that remove vagueness in the process, new entrants will undoubtedly become involved in disputes with the ILECs which will deny prompt services to customers that have properly authorized release of CPNI useful in the planning and provision of such services, and will otherwise limit competition.

If an ILEC customer provides valid written authorization that complies with a reasonable benchmark set by the Commission (i.e., a signed form document in which the customer affirmatively authorizes the release of the CPNI to a designated entity), the ILEC, presented with this approval, should lose its current ability to "require" that "its own" form of authorization be used. For example, the Commission should explicitly reject LEC-issued "mandates" that an authorization must be on the customer's letterhead to be valid, as some LECs have contended. Commission

¹² *Id.* at ¶ 36.

guidance should eliminate transparent attempts by ILECs to delay compliance with authorized CPNI requests. Moreover, once presented with such a valid written authorization, the ILEC should provide the information within not later than two business days, absent extraordinary circumstances documented in writing to the requesting carrier. Accordingly, CWI urges the Commission to establish a benchmark to curb the potential for abusive tactics by ILECs.

Finally, the Commission should also consider the requirements of Section 222(b) in this proceeding especially as it relates to development of a competitive local resale market, as well as continued competition in interexchange services and other markets. Section 222(b) provides that a “carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information *for its own marketing efforts*.”¹³ It is important for the Commission to clarify in this proceeding that ILECs have strict obligations to protect against the unauthorized use of such proprietary information, especially the CPNI of local resale customers where the ILEC provides the underlying services.

The Commission should further clarify that the local resale customer’s CPNI is *not* ILEC customer CPNI and adequate measures against unauthorized or anticompetitive use of that CPNI by the ILEC must be ensured. Since that CPNI will be generated through and largely reside in the ILEC’s network, a competing local resale carrier and its customer require added assurance that the ILEC’s personnel will

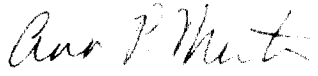
¹³ 47 U.S.C. § 222(b) (emphasis added).

not have access for their own marketing efforts or for other unauthorized purposes. Any abuses in this area must be closely scrutinized and enforced against by the Commission. In the case of a BOC, such acts would clearly weigh against grant of Section 271 petitions for in-region interLATA entry.

V. CONCLUSION

For the foregoing reasons, CWI urges the Commission to adopt CPNI rules that effectively balance privacy and competitive interests, as Congress envisioned in enacting Section 222, and ensure ILECs do not improperly use CPNI and their market dominance to gain unfair advantages against their competitors.

Respectfully submitted,



Ann P. Morton
CABLE & WIRELESS, INC.
8219 Leesburg Pike
Vienna, VA 22182
(703) 734-4440

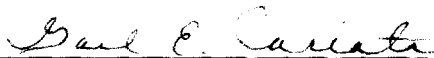
June 11, 1996

Certificate of Service

I certify that a copy of the foregoing "Comments of Cable & Wireless, Inc." in CC Docket No. 96-115, was served on June 11, 1996, by hand to the following:

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

International Transcription Services, Inc.
2100 M Street, NW, Suite 140
Washington, DC 20037


Gail E. Cariota